

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
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Date:
August 09, 2007

Taxpayer:
Amount A =
Amount B =

Dear :

This is in response to the letter from your representative dated February 14, 2007, as supplemented, requesting a ruling concerning the application of § 7702(f)(2)(A) of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Taxpayer is a corporation that qualifies as an insurance company taxable under part I of subchapter L. Taxpayer issues contract, which is an individual, non-participating, flexible premium contract.¹ This contract is issued with various riders, including Rider (collectively referred to as "Contract"). Upon surrender, Contract will pay the policyholder an amount equal to the greater of Contract's 'policy value' or the benefit provided under Rider, which is Amount A less Amount B.² Contract's policy value is, simply put, the amount of premiums plus credited interest less withdrawals and charges/fees.

Contract will satisfy the cash value accumulation test set forth in §§ 7702(a)(1) and (b) if the Service issues the ruling Taxpayer requests and Taxpayer treats Contract's cash surrender value within the meaning of § 7702(f)(2)(A) as equal to the greater of Contract's policy value or the benefit provided under Rider.

¹ The actual contract form used depends upon the policyholder's state of residence.

² The precise manner in which the benefit payable under Rider is computed varies among various state(s) because of different regulatory requirements. The underlying theme of Rider is nonetheless consistent.

RULING REQUESTED

Taxpayer requests a ruling that Contract's cash surrender value within the meaning of § 7702(f)(2)(A) is the greater of its policy value or the benefit provided under Rider.

LAW AND ANALYSIS

For contracts issued after December 31, 1984, § 7702 provides the definition of the term "life insurance contract" for all purposes of the Code. To satisfy this definition, a contract must be a life insurance contract under the applicable law and must meet either 1) the cash value accumulation test or 2) the guideline premium requirements and fall within the cash value corridor. Section 7702(a).

Section 7702(f)(2)(A) provides that, for purposes of § 7702, the cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

The common definition of cash surrender value is "the amount made available, contractually, to a withdrawing policyowner who is terminating his or her protection." Kenneth Black, Jr. & Harold D. Skipper, Jr., LIFE & HEALTH INSURANCE 46 (13th ed. 2000); see also John H. Magee, LIFE INSURANCE 599 (3rd ed. 1958) ("The cash value represents the amount available to the policyholder upon the surrender of the life insurance contract.")

The legislative history of § 7702 defines cash surrender value as the "cash value of any contract (i.e., any amount to which the policyholder is entitled upon surrender and against which the policyholder can borrow) determined without regard to any surrender charge, policy loan, or a reasonable termination dividend." S. Pt. No. 98-169 at 573 (1984); H.R. Rep. No. 98-432 at 1444 (1984).

Section 1.7702-2(h)(2) of the proposed Income Tax Regulations provides that the cash surrender value of a contract generally equals its cash value, as defined in § 1.7702-2(b)(1) of the proposed regulations.

Section 1.7702-2(b)(1) of the proposed regulations provides that, for purposes of § 7702, the cash value of a contract generally equals the greater of (i) the maximum amount payable under the contract (determined without regard to any surrender charge or policy loan) or (ii) the maximum amount that the policyholder can borrow under the contract. 57 Fed. Reg. 59319 (Dec. 15, 1992).

In Notice 93-37, 1993-2 C.B. 331, the Service announced that the effective date of the proposed regulations under § 7702 would be no earlier than the date of publication of the final regulations in the Federal Register. The Notice also stated that it

is anticipated that insurance companies generally will be allowed a period of time after final regulations are published to bring their policy forms into compliance with any new rules.

Here, the amount the policyholder can obtain upon surrender is the greater of Contract's policy value or the benefit provided under Rider. Hence Contract's cash surrender value within the meaning of § 7702(f)(2)(A) is the greater amount.

Ruling

Contract's cash surrender value within the meaning of § 7702(f)(2)(A) is the greater of its policy value or the benefit provided under Rider.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including but not limited to §§ 72, 7702, 7702A, and 7702B.

This ruling is directed only to Taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, for a return(s) filed electronically this requirement is satisfied by attaching a statement to the return(s) that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Donald J. Drees, Jr.
Donald J. Drees, Jr.
Senior Technician Reviewer
Branch 4